IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8625 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMBHAI K PATEL,GEN.SECRETARYNATIONAL ASSO.FOR THE BLIND

Versus

THE STATE OF GUJRAT

Appearance:

1. Special Civil Application No. 8625 of 2005

MR GUNVANT R THAKAR for Petitioner No. 1

Mr. Dipen Desai, AGP for Respondent No. 1

NOTICE NOT RECD BACK for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 12/05/2005

ORAL JUDGEMENT

In this matter, Notice is already issued for final disposal and with the consent of parties the matter is taken up for final hearing today.

2. Rule. In this petition under Article 226 of the

Constitution of India the petitioner has challenged the legality and validity of the order dated 26.7.2004 issued by the respondent No.1 Secretary, Education Department by which recognition of the petitioner-Institution is cancelled.

3. Shri Gunvant R. Thakar, learned advocate for the petitioner has submitted that before passing the impugned order the Under Secretary and/or the Secretary, Education Department had not given any opportunity to the petitioner Trust/Institution to show cause as to why recognition of the Institution should not be cancelled for the allegations which are mentioned in the order. It is submitted that explanation was sought by the GCERT and on the basis of the same the impugned order has been passed. Under the circumstances it is submitted that the impugned order is in breach of principles of natural justice.

4. In response to the notice issued by this Court, Shri Dipen Desai, learned AGP has submitted that in fact by communication/notice dated 20th April 2004 the petitioner was called upon by the GCERT to give explanation and after considering the said explanation and seriousness of the charges the impugned decision has been taken.

5. From the record, it appears that no show cause notice has been issued by the authority who has passed the impugned order. It might be true that on the basis of the explanation as sought for by the GCERT the authority might have passed the order, but the fact remains that the impugned order has been passed by the authority, i.e., Under Secretary/Secretary, Education Department without giving any opportunity to the petitioner to show cause why recognition of the Institution should not be cancelled.

6. Under the circumstances the impugned order dated 26.7.2004 passed by the Under Secretary/Secretary, Education Department in cancelling the recognition of the petitioner Institution is required to be quashed and set aside only on that ground. The matter is remanded to the Secretary, Education Department for passing a fresh order in accordance with law and on merits after giving opportunity to the petitioner. The impugned order dated 26.7.2004 itself is to be treated as show cause notice and the petitioner to file reply to the same within the period of two weeks from today and thereafter after giving opportunity to the petitioner the respondent No.1 and/or the Under Secretary to pass an order in accordance

with law and on merits as early as possible preferably within the period of four weeks thereafter. As agreed by the parties more particularly the petitioner, by setting aside the impugned order it will not create any right in favour of the petitioner to restart the Institution and the same shall be subject to ultimate outcome of the decision that may be taken by the Under Secretary on remand. It is, however, made clear that this Court has not expressed any opinion on merits and only having found that the impugned order is in breach of the principles of natural justice the impugned order is quashed and set aside and it is ultimately for the appropriate authority to pass an appropriate order in accordance with law and on merits.

7. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

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